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SIPDIS

STATE FOR EB/IFD/OIA

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SUBJECT: INVESTMENT CLIMATE STATEMENT FOR GUYANA

REF: 05 STATE 202943

Openness to Foreign Investment

11. The Government of Guyana encourages foreign direct investment in almost all sectors. Billed as a "first stop shop" for investors, the Guyana Office for Investment (GO-INVEST) is charged with leading government efforts to attract foreign and domestic investment. GO-INVEST focuses primarily on the agroprocessing, tourism, manufacturing, information technology, fishing, and wood processing sectors. Potential investors should note that GO-INVEST serves as the first in a long line of bureaucratic hurdles required to obtain the permits and tax concessions necessary to do business in Guyana. Potential investors face separate bureaucratic procedures at ministries throughout the government to obtain the desired permits and concessions. Major foreign investments receive intense political attention in an economy still dominated by the state. The government has enacted new laws and amended existing ones to encourage foreign direct investment, with mixed levels of success.

12. An annual survey of business confidence released in January 2006 revealed less confidence in the business outlook for 2006 compared to the previous year. Of the 42 respondents, 12 were planning to increase the scale of operations in 2006, two were planning to downsize, and 26 planned no change. Among the issues identified as having the most expected impact on business operations in 2006 were fuel prices, political stability, consumer spending, electricity supply and rates, and exchange rates.

13. The National Assembly passed the Investment Act in 2004, designed to stimulate socio-economic development and to attract and facilitate foreign investment. Other important laws pertaining to investment include the Income Tax Act, The Customs Act, the Procurement Act of 2003, the Companies Act of 1991, the Securities Act of 1998, the Small Business Act, and the Consumption Tax Act. However, several outstanding actions are still required for much of this legislation, such as the Procurement Act, to be effectively implemented.

14. Although the judicial system is responsible for upholding the sanctity of contracts, it does not have the capacity to uphold its legal mandate. Apparent corrupt practices, coupled with long delays in the administration of justice make the courts an undesirable and largely ineffective way to settle investment or contractual disputes, particularly for foreign investors unfamiliar with Guyana's political scene.

15. Foreign ownership of companies is permitted and welcomed. There is no mandatory screening of foreign investment. However, the government screens most investments to determine which businesses are eligible for special tax treatment, access to licenses, approval and procurement. In spite of recent moves to remove discretionary power from the various ministries, Ministers still retain significant authority to determine how relevant laws, such as the Investment Act, Small Business Act and Procurement Act, are interpreted.

16. In general, foreign investors receive the same treatment as local investors in Guyana. One exception is the special approval required for local financing. Foreign borrowers applying for a loan of over US\$10,638 (G\$2 million) must request permission from the Minister of Finance to take out the loan locally. This requirement reflects Guyana's preference for foreign investors to bring capital into the country. In most cases, foreign investors seek credit abroad to avoid Guyana's high interest rates. Another exception in the mining sector restricts ownership of small and medium scale mining property titles to Guyanese ownership. However, foreigners may enter into joint-venture arrangements whereby the two parties agree to jointly develop a mining property. There are no restrictions on the percentage of the investment shouldered by the foreign investor. These arrangements are strictly by private contract. Foreign investors that have entered into these arrangements report high levels of risk and have complained

that Guyana's sluggish legal system rarely settles disputes in a timely or satisfactory manner. One investor who entered into a private joint-venture mining contract reported that the mining property was sold by his partner after the investment had been made and without his prior knowledge or consent. Despite some success in the courts, he was unable to fully recover the money he had originally invested.

17. The government has made progress in recent years with privatization initiatives. Of the 18 government entities originally targeted for privatization, 16 have been privatized. The Aroaima Mining Company (AMC) and Guyana Power & Light (GPL) remain the two major exceptions. RUSAL, the Russian aluminum giant, assumed management control of AMC in 2004 as part of a joint agreement with the Government of Guyana to revitalize the bauxite industry. The government announced that AMC is slated for privatization in March 2006, with RUSAL reportedly paying US\$20 million. In 1999, the government entered into a joint agreement with Americas & Caribbean Power Limited (ACP) to privatize GPL, with each party holding 50% of the company's shares. Four years later, ACP sold its shares back to the Government for \$1 and withdrew from the deal. The government is now seeking a US\$30 million investment from local investors for the re-privatization of the utility, though it has not identified any potential suitors. Foreign investors have equal access to privatization opportunities. For some larger operations, foreign investment is openly preferred.

18. Most large-scale investments in Guyana's infrastructure are government projects financed by international lending institutions, with the Inter-American Development Bank (IDB) as the largest donor. U.S. firms are generally given equal access to these projects, though many are too small to interest U.S. bidders.

Conversion and Transfer Policies

19. The Guyana dollar is fully convertible. There are no limits on inflows or repatriation of funds, although there are spot shortages of foreign currency. The exchange rate is US\$1 to G\$199.95 (December 2005). There is no limit to the acquisition of foreign currency, although the government limits the percentage that a number of state-owned firms may keep for their own purchases. The government recently eased restrictions on the establishment of foreign currency bank accounts in Guyana, a step that has significantly simplified the process of moving money. Funds can now be wired in and out of the country electronically without having to go through cumbersome exchange procedures.

110. In practice, many large foreign investors in Guyana use subsidiaries outside Guyana to handle earnings generated by the export of primary products, including timber, gold, and bauxite. Those companies then advance funds to their local entities to cover operating costs.

111. The exchange rate is commercially determined according to market supply and demand using telegraphic transfers for the three largest commercial banks. Political uncertainty and poor economic performance by the Guyanese economy since 1999 have eroded consumer and investor confidence. The government has intervened in support of the Guyana dollar with some success. The government announced that it will continue to intervene in defense of the Guyana dollar and its international reserves.

Expropriation and Compensation

112. On August 16, 2001 the National Assembly approved the Acquisition of Lands for Public Purposes (Amendment) Bill 2001. This Bill cleared the way for the government to specifically acquire a private parcel of land at a price the owner contended was less than fair market value.

Dispute Settlement

113. Guyana is a signatory to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. International arbitration decisions are enforceable under the Arbitration Act of 1931. Guyana is also a member of the International Center for the Settlement of Investment Disputes (ICSID).

114. There have been several high profile investment disputes in recent years involving U.S. and other investors in Guyana. Most disputes focus on special tax treatment, access to licenses, and approvals necessary to conduct business in Guyana.

Performance Requirements & Incentives

¶15. While there is no set policy regarding performance requirements, they are often written into contracts with foreign investors. Some contracts require a certain minimum level of investment. Investors are not required to source locally. They do not have to export a certain percentage of output. Foreign exchange is not rationed in proportion to exports. There are no national ownership or technology transfer requirements.

¶16. The Status of Aliens Act allows a non-resident of Guyana to acquire and dispose of assets, and moveable and immovable property in the same manner as a citizen of Guyana. The government treats domestic and foreign investors alike with regard to investment incentives. There are incentives offered to all investors equally and incentives available based on specific criteria such as location of an investment or investment in specific government-targeted sectors.

¶17. The Fiscal Enactments (Amendment) (No. 2) Bill of 2003 allows the Minister of Finance to grant exemptions from Corporate Taxes for a period of five years to an investor if the activity demonstrably creates new employment in Region 1: Barima Waini, Region 8: Cuyuni-Mazaruni, Region 9: Upper Takatu-Upper Essequibo and Region 10: Upper Demerara - Upper Berbice. The act allows for exemptions of corporate taxes if the new economic activity falls under the following categories: non-traditional agro processing (excludes sugar refinery, rice milling and chicken farming); tourist hotels or eco-tourist hotels; information and communications technology (excluding retail and distribution); petroleum exploration, extraction, or refining and; mineral exploration, extraction, or refining. In the latter three activities defined, the Minister may grant exemptions for a period up to ten years. In spite of outlined provisions for tax relief, the Minister maintains final discretion over which investors receive corporate tax exemptions.

¶18. Other incentives available to investors include affordable leases for land in industrial estates. Though promoted by GO-INVEST, the application for the land is done through the Minister of Tourism, Industry and Commerce. The Ministry of Tourism continues to accept and encourage the submission of lease applications for industrial estates, though there are no industrial estates available for lease. The government advertised two industrial estates near to the capital city of Georgetown as being available for lease. However, the government attempts to repossess these properties are ongoing. The land was previously leased to investors who, according to the government, have not developed the land or engaged it in any productive process. Officials from the Ministry indicated that the process for repossession is not straight forward. To apply, potential investors are requested to submit an application form and a business proposal to the Ministry of Tourism. Though not required, GO-INVEST can make a recommendation to the Ministry of Tourism on the investor's behalf. The application and business proposal is then reviewed by Ministry personnel who determine whether the investor qualifies for the land. Qualifying criteria include the export component of the business and employment opportunities created. It is difficult to predict when and if the government will be successful with repossessing lands since these matters tend to be tied up with extensive Court decisions and appeals.

-Waivers of the customs duty and the high consumption taxes on plant, machinery and equipment are granted based on submissions made to the Commissioner General of the GRA.

-The Income Tax (In Aid of Industry) Act provides for accelerated depreciation of plant and equipment on applicable trades outlined in the act; export tax allowances for manufacturing or processing of non-traditional products exported to countries outside of the Caribbean Community; and research and development tax allowances.

¶19. The approval authority for duty and consumption tax exemptions on plant, equipment, machinery and spare parts lies with the Commissioner General of the GRA. Investors are expected (though not required) to submit business proposals to GO-INVEST that outline the proposed project, the value of the investment, and employment to be generated from the economic activity. GO-INVEST reviews the proposal and makes a recommendation to the GRA. GRA grants approval in accordance with the Customs Duties (Amendment) (No. 2) Order of 2003. Each project is reviewed on a case-by-case basis and recommendations are made accordingly. The GRA determines whether imported materials are being imported for the reasons stated by the investor and whether those materials are eligible for tax relief under the law.

Right to Private Ownership and Establishment

120. Foreign and domestic firms have the right to establish and own business enterprises and engage in all forms of remunerative activity. However, in some cases, licenses are required. Private entities may freely acquire and dispose of interests in business enterprises, although some newly privatized entities have limits on the number of shares that may be acquired by any one individual or entity (domestic or foreign). Similarly, the articles of association of some firms prohibit the issuance of more than a certain number of share transfer forms to any one individual or company in an effort to prevent attempts to gain control of such companies in the secondary market. In theory, the government can limit competition with state-owned companies by denying private firms the required licenses to operate. Licenses are granted primarily in the mining, telecommunications, forestry, banking, tourism and environmental sectors. Investors should be aware that getting all the licenses required to operate in Guyana can be a time-consuming task. According to the GO-INVEST Investor's Roadmap, the estimated processing time to obtain the approvals to lease state or government lands may take one year, though some investors report much longer delays. To register a patent or trademark can take approximately six months. The right of foreigners to own property or land in Guyana is specifically protected under the Constitution.

Protection of Property Rights

121. Guyana adopted British law on patents and copyrights upon independence. This outdated legislation currently is being revised to conform to global norms. For instance, Guyana passed the Geographic Indication Bill in July 2005, giving protection to local products that are uniquely Guyanese in origin. Guyana joined the World Intellectual Property Organization (WIPO) and acceded to the Bern and Paris Conventions in late 1994. WIPO officials visited Guyana in early 1995 and conducted a seminar on intellectual property rights. At present, there is no enforcement mechanism to protect intellectual property rights. Patent and trademark infringement is common. Local television stations pirate and re-broadcast TV satellite signals with impunity. Most music and software for sale is pirated. Book piracy is also rampant, especially foreign textbooks; some estimates say illegally copied textbooks account for nearly one-third of local sales. Guyana has not ratified an intellectual property rights agreement with the U.S. Trade Related Intellectual Property Rights (TRIPS) draft legislation was prepared, but has apparently been shelved.

Transparency of the Regulatory System

122. Guyana has no anti-trust legislation, though a Competition and Fair Trading was tabled in Parliament in December. The Bill includes provisions against bid-rigging, misleading advertisements and price fixing and would establish a Competition Commission with the authority to review anti-competitive business practices. Historical factors, Guyana's small population, and economies of scale have led many sectors to be dominated by one or two firms. Capital markets are still evolving and the allocation of investment takes place without a well-organized market. Bureaucratic procedures are cumbersome. Investors often receive conflicting messages from various officials and have difficulty determining where the authority for decision-making lies. In the current absence of adequate legislation, much decision-making is centralized. An extraordinary number of issues are resolved in Cabinet or in the Office of the President, a process that is not open to public scrutiny and which often results in long delays. Attempts to reform Guyana's many bureaucratic procedures have not succeeded in limiting red tape.

Efficient Capital Markets and Portfolio Investment

123. Guyana's banking system is still not fully developed. Inefficiencies and delays periodically plague the foreign currency exchange market. Businesses report that currency shortages can result in significant delays in converting Guyana dollars to U.S. dollars at some banks. Because Guyana has yet to develop an effective inter-bank trading system, some banks may be short of foreign exchange while others have currency available.

124. In November 2004, the Financial Institutions Act was passed, giving the Central Bank the power to take temporary

control of financial institutions in trouble. This effectively gives the bank greater responsibility for licensed financial institutions. Previously, the Central Bank had been criticized for not taking a more proactive role in helping one local bank to remedy its poor financial situation. As a result, the institution went into receivership and many small depositors were unable to recover their savings.

¶25. The cost of capital in Guyana is not attractive. Interest rates on capital loans range from 10% to 19.75%. The Minister of Finance must give permission for a foreign investor to borrow over US\$10,638 (G\$2 million) in Guyana. The government sells treasury bills at auction to finance the public debt, and other government-controlled rates move with the treasury bill rate. Private attempts at bond financing have not been successful. One large Guyanese company offered a bond issue in early 1995 in an attempt to raise US\$10 million. The issue was not successful and no subsequent large bond offers have been made.

¶26. The banking system in Guyana is liquid. Local bank statements reveal that deposits continue to increase even as loans continue to decrease; a trend that appears to indicate the existence of a large underground economy. Some local analysts suspect that the underground economic activity could account for as much as 50% of Guyana's total economic activity. Eager to lend money, but skeptical of Guyana's legal system, banks claim that they are unable to find suitable local candidates for loans.

¶27. Although large and well-established companies sometimes use equity financing, the government encourages companies to finance new operations by offering shares on Guyana's stock market. In 2003 The Guyana Association of Securities Companies and Intermediaries Inc., (GASCI) a self-regulating organization, was registered to operate the Guyana Stock Exchange. Its members, the stockbrokers who compete against each other in share trading, own GASCI. GASCI relies on trades to support the exchange's operations. However, the small volumes traded have been insufficient to meet organizational expenses. Consequently, the Association has struggled to maintain adequate staffing levels. The Guyana Security Council (GSC), the regulatory body for the Exchange, has been the target of two high profile lawsuits by two of the largest local conglomerates over disclosure issues. The GSC has also struggled to garner the support of listed firms that are unwilling to disclose relevant information. Individual investors generally prefer to utilize the banking sector to finance investments, although one Canadian company reported that it was able to successfully finance its operations using the stock market in late 2004.

Political Violence

¶28. The last three elections, in 1992, 1997 and 2001, saw politically motivated violence leading up to and following the election. National and regional elections are due by August 2006, and some commentators fear violence surrounding the elections may be worse than previous years.

¶29. Apart from election-related violence, crime is a major problem in Guyana. Four Americans were murdered in three separate incidents in 2005. A spate of high profile robberies have prompted private sector interests to call on the Government of Guyana to increase its efforts to stem the crime problem. Most business owners resort to private security protection for both business and home.

Corruption

¶30. Despite the paucity of documented corruption, allegations of corruption are common. Transparency International's 2005 Corruption Perceptions Index ranked Guyana 117 of 158 countries surveyed, assigning the country a score of 2.5 (with 10 being least corrupt and 1 being most corrupt). Although the government acted in 1998 to address this problem with legislation that requires public officials to disclose their assets to an Integrity Commission prior to assuming office, its implementation has been slow and ineffective. The Integrity Commission has not been constituted as a result of disagreement between the government and the main political opposition party on the names of members to sit on the Commission.

¶31. The Procurement Act 2003 was passed in Parliament to provide for the regulation of government procurement of goods, services and the execution of works to promote competition among suppliers and contractors and to promote fairness and transparency in the procurement process. The Act has come under fire by critics because it grants the

Minister of Finance the power to unilaterally appoint a National Board, responsible for the National Procurement and Tender Administration that exercises jurisdiction over tenders.

¶32. Offering or receiving a bribe is a criminal offense in Guyana punishable by incarceration. The law is not applied extraterritorially. The government has periodically prosecuted officials for corruption with mixed success.

Bilateral Investment Agreements

¶33. Guyana has not signed a Bilateral Investment Treaty with the United States. Negotiations began in 1993, but broke down in 1995 due to disagreements on formal investment rules. There have been no continuing negotiations. Guyana has similar treaties with Germany, the United Kingdom, and, most recently, Switzerland. Guyana has double taxation treaties with Canada, the United Kingdom, and CARICOM countries.

OPIC and Other Investment Insurance Programs

¶34. OPIC renewed its support for U.S. investors in Guyana in 2000 following the settlement of a long-standing dispute between an OPIC client, Green Mining, Inc., and Guyana. The EX-IM Bank resumed limited coverage in Guyana, offering insurance and short-term loans for the private sector at the beginning of 1994.

Labor

¶35. According to the 2002 Census, Guyana's labor force comprises approximately 484,000 people with skills encompassing a vast range of disciplines in the fields of manufacturing, agriculture, electronics, commerce, management, and other professional practices. Education and skill development are provided in primary, secondary, and technical schools as well in the university and privately owned institutions of learning. Individual companies mount various programs to develop human resources specific to their needs. Parliament passed the Trade Union Recognition Bill in 1997. All businesses operating in Guyana must recognize and collectively bargain with the trade union selected by a majority of its workers. Guyana adheres to the International Labor Organization (ILO) Convention protecting worker rights.

¶36. Emigration, particularly of skilled labor, poses a serious problem to employers throughout Guyana. An International Monetary Fund study in late 2005 revealed that 86% of college-educated Guyanese have left the country. Large private sector companies report a turnover of about 20% to 25% of their administrative workforce, and extreme difficulty is recruiting and retaining qualified employees. Skilled workers migrate to the United States, Canada, the Caribbean, and Europe. Unemployment and underemployment of the unskilled element of the population also plague Guyana's economy.

Foreign Direct Investment

¶37. There was a surge in foreign direct investment from 1989 to 1991 that fueled healthy growth figures in the early to mid-1990s. In recent years there have been relatively few large-scale investments in Guyana. Bank of Guyana statistics show that foreign direct investment, outside of the telecommunications sector, has decreased in recent years. New foreign direct investment (FDI) in Guyana decreased from US\$43.5 million in 2002 to US\$26.1 million in 2003. In 2004, the telecommunications sector accounted for US\$25 million of the US\$30 million invested in the country. Bank of Guyana statistics for the first half of 2005 report FDI in the amount of US\$61.7 million. A notable recent development was the Russian aluminum company RUSAL's US\$20 million investment in the Aroaima Bauxite Mine. In late 2005, a local manufacturing enterprise announced plans to construct a US\$600,000 food processing facility in the Eccles Industrial Estate following the 2006 elections. A local beverage distributor has also embarked on a US\$841,000 program to upgrade its fleet of American-made delivery vehicles.

¶38. Following is a list of foreign direct investment compiled by the Bank of Guyana for 2002 to 2004.

Foreign Direct Investment

January-December 2002/2004
(US\$ Million)

Companies	2002	2003	2004
Ask 4 Solutions	5.0	-	-
Barama	4.0	11.0	3.3
Blue Sky Communication	2.0	-	-
Caribbean Containers Ltd.	0.3	-	-
Courts	0.3	-	-
Decipher International Inc.	2.0	-	-
Esso Standard Oil S. A. Ltd.	0.3	-	-
Global Seafood Technology	1.3	-	-
Guyana Lottery Company	0.3	-	-
Guyana Power and Light Co.	2.6	-	-
Guyana Telephone & Telegraph Co.	14.0	-	10.0
National Milling Company Ltd.	0.5	-	-
Omai	4.5	1.5	-
Sanata	6.4	-	-
Trans World Telecom (TWT)	-	6.0	15.0
Mining Exploration companies	-	7.6	5.0
Skeldon	-	-	1.7
Total	43.5	26.1	35.0

Source: Bank of Guyana

The Guyana government has signed a deal with a Canadian company, Cambior, to privatize the Linmine bauxite operations. The government announced plans to secure investments during 2005 with the following entities:
 Jaling Forest Industries Inc. (Canadian Investors)
 Omai Bauxite Company Ltd. (US\$39M) (Canadian Investors)
 Lake View Hotel and Resort (US\$25M) (Unknown Investors)
 RotorWay International Guyana (US\$5M) (American Investor)
 ROMANEX Guyana Exploration Ltd. - a subsidiary Of Vannessa Ventures (US\$1.5M) (Canadian Investors)

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